

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

I.T.A. No. 159/VIZ/2020

A Little Flower
Educational Society,
D.No.21/230-6A,
Parasupeta,
Machilipatnam

Vs.

CIT(E), Hyderabad.

PAN No. AABAA 4192 M
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA
Department by : Shri D.K. Sonawal, CIT DR

Date of hearing : 16/09/2021.
Date of pronouncement : 27/09/2021.

ORDER

PER BENCH

This appeal has been preferred against the order dated 27/09/2019 impugned herein passed by the Id.Commissioner of Income Tax (Exemptions) [for short, "Id. CIT(E)"], Hyderabad u/sec. 12AA of the Income Tax Act, 1961 (hereinafter referred to as "Act") whereby Assessee's application for registration u/sec. 12AA was rejected.

2. At the outset, it is observed that there is a delay of 228 days in filing the instant appeal. The Assessee appellant has filed an application for condonation of delay along with affidavit of its President wherein it is submitted as under:

“That rejection of order u/sec. 12AA of the Act dated 27/09/2019 was served upon the appellant society on 03/10/2019. Thereafter, the Managing Committee of the appellant society in its regular meeting held on 20/11/2019, after due deliberations, though it is fit to file another fresh application for registration while considering the fact that since the ld.CIT(E) has mainly rejected the ground of registration on the ground that clause 9 of MoA is commercial in nature, which was amended by the appellant society on dated 10/09/2019 and the same was acknowledged by the Registrar of Societies on dated 18/09/2021. Subsequently, the appellant society contacted a senior counsel Shri C. Subrahmanyam, CA at Visakhapatnam who gave appointment on dated 30/11/2019 but due to misfortune the deponent (President of the society) met with an accident wherein his left leg got fractured and was hospitalized for 02 weeks till 14th Dec., 2019 and he was advised for bed rest for 02 months, however could not recover as expected and filing the appeal as slipped out of his mind, however, while realizing in the second week of March, 2020 and thereafter the appellant society was able to file the appeal only on 15/07/2020 which resulted into delay of 228 days. The said delay was neither intentional nor deliberate/malafide.”

3. On the contrary Ld. DR refuted the claim of the appellant.

4. We have considered the facts and circumstances of the case and affidavit and medical certificate filed by the President of the appellant society and also considered the Covid-19 lockdown period. We are of the considered view that reasons given by the Assessee for delay, seems to be bonafide and unintentional and non-malafide and therefore we deem it appropriate to condone the delay of 228 days. Hence, the delay of 228 days in filing the instant appeal is condoned accordingly.

5. Coming to the merits of the case, Ld. A R drawn our attention to the affidavit of Shri G.V. Bramchari, filed before the tribunal wherein it is submitted *that the Authorised Representative of the appellant society personally appeared in the office of the ld. Commissioner, Hyderabad on 13/09/2019 and filed its explanation, in response to the information vide covering letter dated 12/09/2019 and also explained to the ld. Commissioner that no non-charitable objective was ever pursued by the society since its formation and the society has been running Government recognised school for many years, on non-profit basis. Ld.AR also promised to get the objects duly amended to drop the expression “commercial coaching”. Ld.AR was asked to appear again within a week and in the meantime has carried out the amendment to its objects clause by dropping the expression “Commercial coaching”. Thereafter, the ld.AR visited the office of ld. Commissioner, Hyderabad on 19/09/2019 and physically filed a letter with a copy of amendment with MOA in order to get the registration u/sec. 12AA of the Act. Ld.AR further submitted that he personally filed a covering letter along with the enclosures as mentioned in the said letter dated 19/09/2019 enclosed to the paper*

book filed before the Hon'ble Tribunal. The Id. AR claimed that while passing order of refusal of registration vide order dated 27/09/2019, Id. Commissioner has not adverted to the aforementioned facts of his appearance, representation made and the fact of effecting amendment to the MOA of the appellant society.

5.1 While coming to the order of the Id. Commissioner, where is mentioned *that a notice dated 14/08/2019 was issued to the appellant society for verification of the MOA/trust deed and to furnish a detailed reply on specific points on or before 05/09/2019. In response thereto, the Assessee vide letter dated 05/09/2019 has requested for adjournment of the case for one week, therefore on consideration of the request the case was adjourned to 13/09/2019 and the same was intimated to the Assessee through e-mail on dated 05/09/2019. In response thereto Shri G.V. Bramchari CA/AR of the appellant society attended the hearing.*

5.2 We have considered the factual position as it appears from the affidavit filed by the CA of the appellant society and the impugned order. In the impugned order it is mentioned by the Id. Commissioner that the case was adjourned to 13/09/2019 and on that date, Id. CA Shri G.V. Bramchari attended the hearing. Whereas by filing affidavit, Mr. G.V. Bramchari CA/AR submitted that he also appeared on 19/09/2019 and filed the relevant documents with regard to amendment of the objects and explained the case, however while passing the order on dated 27/09/2019 the Id. Commissioner has not adverted to the aforementioned facts of his appearance, representation made and the fact of effecting amendment to the MOA of the appellant society.

5.3 Ld. DR, though, supported the order of the Id.CIT(E), however, did not refute the claim of the Assessee specifically.

5.4 More or less the claim of the appellant society is that the Id. Commissioner failed to consider the relevant documents filed before him on dated 19/09/2019 and directly passed the order on 27/09/2019 without giving reasonable opportunity of being heard.

The proviso to section 12AA (1) of the act clearly provides that no order under sub clause (ii) of clause (b) of section 12AA(1) shall be passed unless the applicant has been given reasonable opportunity of being heard. In simple meaning the provisions of section 12AA(1) of the Act mandates that if the Id. Commissioner is not satisfied, then he can pass an order in writing refusing to register the trust or institution, provided before passing the rejection order, a reasonable opportunity of being heard is required to be given to the applicant.

As it appears from the impugned order that though opportunity was given for verification of the MOA/trust deed and to furnish a detailed reply on specific points on 13/09/2019, however before refusing to register the appellant herein u/s 12AA of the ACT, no adequate and reasonable opportunity of being heard was given to the Appellant hence we are not going into the controversy as to whether the appellant's representative appeared before the Commissioner on 19/09/2019 or not.

Hence, considering the peculiar facts and circumstances we deem it appropriate to remand the case to the file of the Id.

Commissioner for decision afresh, suffice to say while affording reasonable opportunity(s) of being heard to the appellant society.

6. In the result, appeal filed by the Assessee stands allowed for statistical purpose.

Order Pronounced in open Court on this 27th day of Sep., 2021.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 27th Sep., 2021.

vr/-

Copy to:

- 1. The Assessee - A Little Flower Educational Society, D.No.21/230-6A, Parasupeta, Machilipatnam*
- 2. The Revenue - CIT(E), Hyderabad.*
- 3. The D.R., Visakhapatnam.*
- 4. Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.